

EXHIBIT 2

Filed 09 December 21 P4:37
Loren Jackson - District Clerk
Harris County
ED101J015612600
By: bridgett stanfield

Cause No. 2009-76816

JOHN DANIEL,

Plaintiff,

v.

UNIVERSAL ENSCO, INC.,

Defendant.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

133rd JUDICIAL DISTRICT

**ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT UNIVERSAL ENSCO, INC.**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, Universal Enesco, Inc. (hereinafter referred to as "UEI" or "Defendant") files this Original Answer to the Original Petition of Plaintiff, John Daniel (hereinafter referred to as "Daniel" or "Plaintiff"), and would respectfully show as follows:

I.

AFFIRMATIVE DEFENSES

Defendant hereby sets forth below its affirmative defenses to Plaintiff's Original Petition, and each and every cause of action or claim alleged therein, without assuming or undertaking any burden or burdens of proof not otherwise assigned to it by law.

FIRST DEFENSE

Defendant affirmatively pleads that Plaintiff's Original Petition fails to state a claim or cause of action upon which relief can be granted; therefore, this suit should be dismissed in its entirety.

SECOND DEFENSE

Defendant affirmatively pleads plaintiff was an at-will employee, as that term is defined in the common law of Texas, and could be terminated at any time, for any reason or no reason at all.

THIRD DEFENSE

Defendant affirmatively pleads that it is not liable for damages, including punitive or exemplary damages, because the actions taken with respect to Plaintiff were at all times motivated by good faith, and not in connection with any improperly motivated factor; were based on legitimate, non-discriminatory or non-retaliatory considerations; and were job-related and consistent with business necessity.

FOURTH DEFENSE

Defendant affirmatively pleads all or part of Plaintiff's theories and/or claims are barred as a result of his failure to exhaust his administrative remedies.

FIFTH DEFENSE

Defendant affirmatively pleads that to the extent Plaintiff failed to mitigate his damages, his claims for lost wages or back pay and/or future wages or front pay should be denied or, in the alternative, reduced.

SIXTH DEFENSE

Defendant affirmatively pleads that Plaintiff cannot recover under the after-acquired evidence doctrine to the extent he engaged in conduct which, if known by Defendant, would have caused Plaintiff not to be hired or to be terminated by Defendant.

SEVENTH DEFENSE

Defendant affirmatively pleads that any and all acts, conduct and/or omissions of Defendant in regard to Plaintiff were taken in good faith and without malice or reckless indifference of Plaintiff's rights, thereby precluding any and all claims for punitive or exemplary damages.

EIGHTH DEFENSE

Defendant affirmatively pleads that this suit is frivolous, unreasonable, or without foundation and, as a result, Defendant is entitled to recover its costs and attorney's fees from Plaintiff.

NINTH DEFENSE

Defendant affirmatively pleads that any award of exemplary damages violates the due process clause of the Fifth Amendment and Fourteenth Amendment to the United States Constitution, in addition to Article 1, Sections 13 and 19 of the Texas Constitution of the Texas Constitution.

TENTH DEFENSE

To the extent Plaintiff asserts his age, religion, or national origin was a motivating factor in the employment decision(s) at issue, Defendant affirmatively states that it would have made the same decision(s) regardless of Plaintiff's age, religion, or national origin.

ELEVENTH DEFENSE

Defendant affirmatively pleads that to the extent Plaintiff proves actionable harassment based on his age, national origin or religion, Defendant has exercised reasonable care to prevent and correct promptly any discriminatory or harassing behavior by adopting and practicing an anti-discrimination and harassment policy, which includes a complaint procedure and Plaintiff unreasonably failed to avail himself of the preventative and corrective measures provided by Defendant.

TWELFTH DEFENSE

Defendant affirmatively pleads any award of damages should be subject to the applicable statutory caps and limits imposed therein.

THIRTEENTH DEFENSE

Defendant affirmatively pleads Plaintiff's claims are barred to the extent he failed to exercise good faith in reporting a violation of the law.

FOURTEENTH DEFENSE

Defendant affirmatively pleads one or more of Plaintiff's claims are barred by the doctrine of waiver.

RESERVATION OF RIGHT TO ASSERT DEFENSES

In addition to the foregoing affirmative defenses, Plaintiff's claim may be subject to one or more of the remaining affirmative defenses provided in the Texas Rules of Civil Procedure. Defendant hereby affirmatively reserves the right to add such defenses to Plaintiff's claims as discovery in this case proceeds.

**II.
GENERAL DENIAL**

Without waiving the foregoing affirmative defenses, Defendant assert a general denial, as is authorized by Rule 92 of the Texas Rules of Civil Procedure, of all matters pled by Plaintiff, and respectfully requests that the court require Plaintiff to prove his charges and allegations against Defendant by a preponderance of the evidence.

**III.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant demands that the Court enter judgment in its favor, that Plaintiff take nothing, and that Plaintiff's Original Petition be

dismissed with prejudice, with costs and reasonable attorneys' fees assessed against Plaintiff.

Defendant prays for any other relief to which it is justly entitled.

Respectfully submitted,

/s/ Charles H. Wilson

Charles H. Wilson

Texas Bar No. 00797678

Daniel J. Schuch

Texas Bar No. 24151305

Epstein Becker Green Wickliff & Hall, P.C.

Wells Fargo Plaza

1000 Louisiana, Suite 5400

Houston, Texas 77002-5013

713.750.3100

713.750.3101

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I do hereby certify that, on this the 21st day of December 2009, a true and correct copy of the *Original Answer of Universal Enso, Inc. and Request for Disclosure* was duly served upon the following counsel of record via certified mail, return receipt requested, and facsimile:

Glenn W. Patterson, Jr.
11 Greenway Plaza, Suite 2820
Houston, Texas 77046
(713) 961-1200
(713) 961-0941 (Facsimile)

/s/ Daniel J. Schuch

Daniel J. Schuch



I, Loren Jackson, District Clerk of Harris
County, Texas certify that this is a true and
correct copy of the original record filed and or
recorded in my office, electronically or hard
copy, as it appears on this date
Witness my official hand and seal of office
this December 30, 2009

Certified Document Number: 44147100 Total Pages: 5

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com